

## RESPECT DUE TO FOREIGN SOVEREIGNS

The advance of democracy and the improvement in the means of communication have combined to place the liberal group of states in a veritable dilemma. On the one hand, governments immediately responsible and, therefore, responsive to public opinion, must be prepared to take action in the presence of a general wave of popular indignation whenever co-religionists or political sympathizers are maltreated in other states; and, on the other hand, governments of the liberal states cannot disregard their obligation to refrain from any interference in the internal affairs of another state. In this embarrassing situation statesmen are sometimes inclined to blow now hot, now cold. Our own chief executive has not evinced any such tendency and, leading public opinion, has undoubtedly voiced the general sentiment of this nation in recent addresses when he lauded democracy and criticized, directly and by implication, the autocratic régimes and the militaristic policies prevalent in certain European states. He was, however, careful not to specify them by name.

But the members of our legislative bodies and our state and local officials are not always so circumspect. When the mayor of an American city containing more inhabitants than are to be found in many of the states of the world, launched a vituperative personal attack upon the dictator of a great state with which we have extensive commercial and cultural relations, it became incumbent upon our Secretary of State, in answer to the ensuing formal protest, to express his regret at the occurrence, and it was natural that he should seek to avoid further responsibility on the ground of the well known freedom of speech which prevails in this country. The press of the state in question responded by virulent and insulting criticism of American conditions and characteristics, and our Department of State found it requisite to make representations on our own account.<sup>1</sup> Such ebullitions and manifestations of irritation are incidents in the great world-wide campaign which is now in progress between the opposing philosophies of government. In submitting these contradictory plans of government to the peoples of the world, it is impossible to avoid some crossing of the diplomatic wires and the engendering of no little irritation between the responsible authorities of opposing tendencies. Under such circumstances it is difficult to apply the rules of international law, and the appeasement of the irritation must be left largely to the deft art of diplomacy, which essays to be all things to all forms of government, to reconcile these opposing views, and to offer a working compromise which will not wound national sentiments and aspirations.

We must not, however, forget that there are certain well-defined principles of international law which do apply in the premises. In the first place, every state is required by the law of nations to see that within and throughout its whole extent due respect is shown to the insignia and to the person of the head

<sup>1</sup> See Press Releases of the Dept. of State, March 6, p. 133, and March 20, p. 157.

of every other foreign state. Our own citizens may, if they choose, within our family circle as it were, write or say what they like about our President. The head of our state combines with that high office another distinct quality of party chief and, as such, must expect to be the target for criticisms not only from private citizens but also from any state or municipal officer who may care to assume personal responsibility for such utterances; but when officers employ a similar license in attacks upon the heads of foreign states, the nation as a whole is required to assume a certain responsibility for their acts. We cannot hide behind our Federal system, for, obviously, foreign governments cannot call our municipalities or the states of our Union directly to account, and so, logically and through the application of the well-known principles of international law, we must assume before other nations responsibility for the acts of our officials. We may prefer to make such honorable amend as we can to the foreign state rather than to adopt the measures necessary to enable us to restrict and punish those guilty of such violations of our obligations toward a sister state, but we undoubtedly have the authority to enact legislation effective for this purpose. Yet it is not likely that any administration would care to tread this path.

When Lord Palmerston, in 1858, at the height of his political power and prestige, moved to secure the adoption by Parliament of legislation necessary to prevent conspirators from using British soil as a base for their plots and attacks against the governments of other states—and more especially for the purpose of preserving good relations with France—he was hurled from his high estate by the indignant revolt of the members of that body. His fall was a lesson which succeeding governments in Great Britain and elsewhere have not forgotten.

In France there exists a provision which gives the government power to punish anyone whose conduct is such as to endanger reprisals from a foreign state; yet when the Spanish writer Ibañez took advantage of his refuge within the French border to hurl his libelous darts at the Spanish King, the French Government, fearing popular resentment, remained passive and even went so far, if rumor is correct, as to induce the Spanish authorities to request the French Government to refrain from prosecuting the author of the attacks. On the surface this resulted in a saving of face for the two governments, but one may doubt whether it did much to preserve a cordial feeling between the two states.

In the early days of our republic, McKean, Chief Justice of Pennsylvania, called to the attention of the grand jury in Philadelphia certain publications of Cobbett and others grossly attacking the King of Spain as the "supple tool of the French nation." In the course of his charge the eminent justice said:

At a time when misunderstandings prevail between the Republic of France and the United States, and when our General Government have appointed public ministers, to endeavor to effect their removal and re-

store the former harmony, some of the journals or newspapers in the city of Philadelphia have teemed with the most irritating invectives, couched in the most vulgar and opprobrious language, not only against the French nation and their allies, but the very men in power with whom the ministers of our country are sent to negotiate. These publications have an evident tendency, not only to frustrate a reconciliation, but to create a rupture and provoke a war between the sister Republics, and seem calculated to villify—nay, to subvert—all republican governments whatever.

Impressed with the duties of my station, I have used some endeavors for checking these evils, by binding over the editor and printer of one of them—licentious and virulent beyond all former example—to his good behavior; but he still perseveres in his nefarious publications. He has ransacked our language for terms of insult and reproach, and for the basest accusations against every ruler and distinguished character in France and Spain with whom we chance to have any intercourse, which it is scarce in nature to forgive—in brief, he braves his recognizance and the laws. It is now with you, gentlemen of the grand jury, to animadvert on his conduct; without your aid it cannot be corrected. The Government that will not discountenance, may be thought to adopt it, and be deemed justly chargeable with all the consequences.

Every nation ought to avoid giving any real offense to another. Some medals and dull jests are mentioned and represented as a ground of quarrel between the English and Dutch in 1672, and likewise called Louis the XIV to make an expedition into the United Provinces of the Netherlands in the same year, and nearly ruined the commonwealth.<sup>2</sup>

Although the jury failed to heed this charge and thereby paralyzed the taking of any effective corrective action, Chief Justice McKean correctly stated our international responsibility.

In 1902 a Swiss newspaper published a statement which was considered as an insult to the memory of King Humbert I of Italy.<sup>3</sup> Switzerland later made provision to repress similar offences directed against the heads of foreign states and governments.

John Peltier, the French refugee, was prosecuted in the British courts in 1803 for libel on Napoleon Bonaparte, then First Consul of the French Republic. Lord Ellenborough tried the case, and notwithstanding the able defense of MacIntosh, perhaps the outstanding British authority on international law, the jury found his client Peltier guilty, but as war soon broke out between Great Britain and France, Peltier was not called upon to receive judgment.<sup>4</sup>

<sup>2</sup> As given in Moore's International Law Digest, Vol. II, pp. 161-162, quoting Francis Wharton in Criminal Law Magazine, Vol. 6, p. 176.

<sup>3</sup> See Kebedgy in the *Revue général de droit international public*, Vol. IX, p. 719; Ferringni, *Les souverains étrangers et le droit italien*, 1903, as cited in Paul Fauchille, *Traité de droit international public* (Paris, 1926), Vol. I, Pt. III, p. 16, § 646.

<sup>4</sup> See State Trials (Howell), Vol. XXVIII, pp. 530-615, cited in Phillimore's International Law, 2d ed., Vol. 1, p. 447. An interesting account of the trial of John Peltier with the defence by Mr. Mackintosh, was taken down in shorthand and printed for Mr. Peltier by Cox, Son and Baylis, London, 1803.

In view of the delicate situation in the world today, it is incumbent upon every official in the United States, be he federal, state, or municipal, to remember his responsibility and to refrain from any attacks upon the head of a foreign state. If he must indulge in such irresponsible conduct, let him select as his target one who does not require the maintenance of personal prestige for the security of his person and the continuance of his political régime.

When the mayor of the second city in this country sought to secure the support of ignorant masses by promising to free them from the control of a foreign king and to chastise him when they should meet, we failed to note any official protests from the government of that august personage beyond the seas. When the soldiers of Diocletian brought in the zealots who had been guilty of smashing the noses of his own replicas in marble, the emperor, running his hand over his visage, remarked, "I do not feel the injury," and let them go.

Yet we cannot push the principle of state independence to the limit of refusing to recognize that we have any concern in that which occurs beyond our borders. That great jurist John Westlake, referring to the moral effect on neighboring populations of the treatment of individuals in another state, declared:

Where these include considerable numbers allied by religion, language or race to the populations suffering from misrule, to restrain the former from giving support to the latter in violation of the legal rights of the misruled state may be a task beyond the power of their governments, or requiring it to resort to modes of constraint irksome to its subjects, and not necessary for their good order if they were not excited by the spectacle of miseries which they must feel acutely. It is idle to argue in such a case that the duty of the neighboring peoples is to look on quietly. Laws are made for men and not for creatures of the imagination, and they must not create or tolerate for them situations which are beyond the endurance, we will not say of average human nature, since laws may fairly expect to raise the standard by their operation, but of the best human nature that at the time and place they can hope to meet with.<sup>5</sup>

It is the task of international law to find some equitable and workable compromise to reconcile the right, on the one hand, of each state within its territory to apply such rules and principles as it deems best with its obligation; on the other hand, to refrain from conduct which is so arbitrary and extreme as to disregard the generally recognized principles of humane treatment as understood by the majority of civilized states. ELLERY C. STOWELL

#### "NEUTRALITY" AND CIVIL WARS

Weird things are done nowadays in the guise and under the name of "neutrality." An interesting exemplification of this conclusion may be found in the Spanish Civil War embargo enacted by Congress last January and in the provisions governing civil strife of the Pittman and McReynolds Resolutions

<sup>5</sup> John Westlake, *International Law*, Vol. 1, pp. 319-320.